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## ATTN: New Accounts

816.474.8999 or [underwriting@bankcardcentral.com](mailto:underwriting@bankcardcentral.com)

### Merchant Application Checklist

Merchant/DBA Name: \_\_\_\_\_

#### Required Documentation:

- Signed and completed Merchant Application/Processing Agreement
- Initial All Pages (7) (Includes Checklist, Application, W-9, Disclosure and Terms and Conditions)
- Completed Fee Schedule
- Banking Information
  - Voided Check
  - Bank Verification (Business Name, Address and Account Information on Bank Letterhead)
- Copy of Business License
- Copy of principals Drivers License or other Government Issued ID
- 3 Most current processing statements (If currently processing)
- Site Survey – Photos or other reasonable business verification
- Signed Addendum(s)


#### Card-NOT-Present Documentation Requirements:

- Copies of brochures/catalogs/ads, as applicable, used by the merchant, along with a description of the merchant's business model

#### High Volume/High Risk Account Documentation Requirements

- High Volume and high risk merchant application may need other documentation. Please refer to the BCC underwriting matrix.

All documents are required to be completed before you are approved to be a merchant.



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

AGENT NAME			AGENT #		MERCHANT ID			MCC CODE		
<b>LEGAL ORGANIZATION</b>					<b>MERCHANT TYPE</b>					
<input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> LLC STATE: _____ <input type="checkbox"/> Non-Profit (Provide 503-C) <input type="checkbox"/> Private <input type="checkbox"/> Publicly Traded <input type="checkbox"/> Government					<input type="checkbox"/> Retail <input type="checkbox"/> Retail w/Tip <input type="checkbox"/> MO/TO <input type="checkbox"/> E-Commerce <input type="checkbox"/> Restaurant <input type="checkbox"/> QSR <input type="checkbox"/> Supermarket <input type="checkbox"/> Petroleum <input type="checkbox"/> Other _____					
<b>BUSINESS INFORMATION</b>										
MERCHANT NAME (DBA or Trade Name) <input type="checkbox"/> MAIL STATEMENTS TO THIS ADDRESS					CORPORATE / LEGAL NAME (if Different) <input type="checkbox"/> MAIL STATEMENTS TO THIS ADDRESS					
LOCATION ADDRESS					CORPORATE ADDRESS (if Different)					
CITY		STATE	ZIP		CITY			STATE	ZIP	
FEDERAL TAX ID		BUSINESS EMAIL ADDRESS			BUSINESS PHONE		BUSINESS FAX			
CONTACT NAME		CONTACT EMAIL			CONTACT PHONE		FAX NUMBER			
MERCHANDISE / SERVICE SOLD					WEBSITE URL					
DOES THIS LOCATION CURRENTLY TAKE PAYMENT CARDS? <input type="checkbox"/> YES <input type="checkbox"/> NO (If YES, attach 3 most recent statements. REASON FOR LEAVING: _____)					HAS PRINCIPAL(S) AND/OR BUSINESS EVER BEEN PLACED ON TERMINATED MERCHANT FILE (TMF)? <input type="checkbox"/> YES <input type="checkbox"/> NO BY WHOM: _____ DATE: _____					
WHO IS YOUR CURRENT PAYMENT CARD PROCESSOR?					HAVE OWNER(S) OR BUSINESS EVER FILED FOR BANKRUPTCY? <input type="checkbox"/> YES <input type="checkbox"/> NO (If YES, please attach sheet with details) DATE: _____					
AGE OF BUSINESS: YEARS: _____ MONTHS: _____			SEASONAL SALES: <input type="checkbox"/> YES <input type="checkbox"/> NO If so, please circle high volume months: J F M A M J J A S O N D							
<b>OFFICERS AND/OR OWNERS WARRANT THE AVERAGE TICKET SIZE AND SALES VOLUME INDICATED ARE ACCURATE AND ACKNOWLEDGE THAT VARIANCES CAN RESULT IN INCREASED FEES, DELAYED AND/OR WITHHELD SETTLEMENT OF FUNDS, AND EVEN TERMINATION OF PROCESSING.</b>										
CREDIT CARDS SWIPED %		MO/TO: %		INTERNET * %		AVERAGE SALE \$		HIGHEST SALE \$		AVERAGE MONTHLY SALE \$
<b>* Merchants processing less than 70% swipe transactions must complete the MO/TO Questionnaire</b>										
<b>PRINCIPAL INFORMATION</b>										
<b>PRINCIPAL #1:</b>	LAST NAME, FIRST NAME MIDDLE INITIAL				DATE OF BIRTH		SSN			
% OWNERSHIP	TITLE				DRIVERS LICENSE #			DL STATE		
HOME ADDRESS				CITY			STATE	ZIP		
HOME PHONE		CELL PHONE			FAX NUMBER					
<b>PRINCIPAL #2:</b>	LAST NAME, FIRST NAME MIDDLE INITIAL				DATE OF BIRTH		SSN			
% OWNERSHIP	TITLE				DRIVERS LICENSE #			DL STATE		
HOME ADDRESS				CITY			STATE	ZIP		
HOME PHONE		CELL PHONE			FAX NUMBER					
<b>BANKING INFORMATION</b>										
BANK NAME		CONTACT NAME		PHONE NUMBER		ABA ROUTING NUMBER		ACCOUNT NUMBER		
<b>TRADE SUPPLIERS</b>										
TRADE SUPPLIER 1					TRADE SUPPLIER 2					
CONTACT NAME			PHONE NUMBER		CONTACT NAME			PHONE NUMBER		
ACCOUNT NUMBER			TERMS		ACCOUNT NUMBER			TERMS		
<b>BANK DISCLOSURE</b>										
<b>Member Bank Information:</b> Merrick Bank, 135 Crossways Park Drive North, Suite A100, Woodbury, NY 11797 • Phone (800) 267-2256 <b>Important Bank Responsibilities:</b> 1. Merrick Bank is the only entity approved to extend acceptance of Visa products directly to a Merchant. 4. Merrick Bank, not the ISO, must hold, administer and control settlement funds for the Merchant. 2. Merrick Bank is responsible for educating Merchants on pertinent Visa operating regulations with which Merchants must comply. 5. Merrick Bank must be a principal (signer) to the Merchant Agreement 3. Merrick Bank, not the ISO, must hold, administer and control all reserve funds derived from settlement.										
<b>Merchant Information:</b> Refer to Merchant Application <b>Important Merchant Responsibilities:</b> 1. Complying with cardholder data security and storage requirements. 3. Reviewing and understanding the Merchant Agreement. 2. Maintaining fraud and chargebacks below established thresholds. 4. Complying with Visa's operating regulations.										
The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member - Merrick Bank - is the ultimate authority should the Merchant have any problems.										
Merchant Name: _____ Address: _____					Phone: _____					
Merchant Signature/Title: _____					Date: _____					
<b>TERMS AND CONDITIONS</b>										
By signing I acknowledge that I have read and agree to the Terms and Conditions which I can access anytime at <a href="http://www.bankcardcentral.com/BCC-T&amp;C.pdf">http://www.bankcardcentral.com/BCC-T&amp;C.pdf</a>										
<b>Owner #1 Signature</b>				<b>Print Name</b>			<b>Date</b>			

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**

A merchant may not accept a Card for an unlawful Internet gambling transaction. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank which are attributable, at the Bank's discretion, to Merchant's Transaction processing or business.

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**PCI TOOLKIT** \$10 or \$15 with Quarterly Scan  
BankCard Central requires all merchants to complete PCI SAQ. Includes \$50,000 Breach Insurance. <https://www.pctoolkit.net/bankcardcentral/> Initials: \_\_\_\_\_

**INTERCHANGE PLUS** BP NOTES: \_\_\_\_\_

CARD TYPE	QUALIFIED	MID-QUAL	NON-QUAL	TYPE	FEE	TYPE	FEE
VISA/MC/DISC® AQR CREDIT				AUTH FEE		MONTHLY SUPPORT PKG	\$15.00
VISA/MC/DISC AQR DEBIT				TRANS FEE		MONTHLY MINIMUM	\$25.00
PIN-BASED DEBIT ***				BATCH FEE	\$0.20	ACH RETURN FEE	\$25.00
EBT – FNS # REQUIRED				AVS FEE	\$0.05	FEE PER CHARGEBACK	\$25.00
OTHER				VOICE AUTH	\$0.95	FEE PER RETRIEVAL	\$10.00

Card Industry Acquirer Fees will be charged at cost. (Interchange Fees, Dues and Assessments Plus) \*\*\* Requires use of properly encrypted PINpad

**AMERICAN EXPRESS (SIGNATURE REQUIRED TO OPEN A NEW AMEX ACCOUNT) RATES ARE SET BY AMEX**

For BankCard Central to Request an American Express Number on behalf of the merchant: By signing below, I represent that the information I have provided on the Application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, you agree to be bound by the Terms and Conditions.

**AMEX ACCOUNT #** AMEX  AUTH FEE  TRANS FEE

**OWNER #1 SIGNATURE** PRINT NAME DATE

**INVESTIGATIVE CONSUMER REPORT**

An investigative or consumer report may be made in connection with application. MERCHANT authorizes BANK AND BCC, or any of its agents, to investigate the references provided or any other statements or data obtained from MERCHANT or any of the undersigned individuals with credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

**DEBIT/CREDIT AUTHORIZATION**

Merchant hereby authorizes BANK and BANKCARD CENTRAL in accordance with this Merchant Processing Agreement to initiate debit/credit entries to Merchant's checking account, as indicated below. The authority is to remain in full force and effect until (a) BANK and BANKCARD CENTRAL have received written notice from Merchant of its termination in such a manner as to afford BANK and BANKCARD CENTRAL reasonable opportunity to act on it; and (b) all obligations of Merchant to BANK and BANKCARD CENTRAL that have arisen under this Agreement have been paid full, including, but not limited to, those obligations described in this Agreement.

**INDIVIDUAL GUARANTY**

The undersigned (jointly and severally if more than one) as an inducement for Bank ("Bank") and Bankcard Central ("BCC") to enter into this Merchant Agreement with the above named Merchant, hereby absolutely and unconditionally guarantees the full and prompt payment of any and all amounts owed to Bank and/or BCC, and performance of all obligations of the Merchant under this agreement. The undersigned guarantor(s) agree(s) to pay or perform upon demand and waive(s) any notice, presentment, demand collection from others or delay in enforcement. This Guaranty includes (i) any amount returned to the Bank and/or BCC after receipt due to any bankruptcy or similar law and (ii) Bank's and/or BCC's expenses including attorney(s) fees and costs. Any sums owing by the Merchant to the undersigned shall be subordinate to sums owed to Bank and/or BCC. This Guaranty will not be discharged or affected by death of the undersigned and is continuing and binding upon heirs and successors, and may not be changed except in writing, signed by the Bank and BCC. Guarantor(s) understand that the inducement to BCC and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

**OWNER #1 SIGNATURE** PRINT NAME DATE

**OWNER #2 SIGNATURE** PRINT NAME DATE

**AGREED AND ACCEPTED**

**OWNER #1 SIGNATURE** PRINT NAME DATE

**OWNER #2 SIGNATURE** PRINT NAME DATE

**CORPORATE RESOLUTION (FOR ALL CORPORATIONS)**

**OWNER #1 SIGNATURE** PRINT NAME DATE

**QUESTIONNAIRE: COMPLETE THIS SECTION IF PROCESSING LESS THAN 70% CARD-PRESENT**

Do you own the product/inventory?  Yes  No

When is the Cardholder billed for products/services?  Order  Shipment

When is product/service delivered?  Time of Sale  1-5 Days  5-15 Days  15-30 Days  30 Days+

Is the product stored at your business location?  Yes  No If No, Where is it stored?

List any other companies involved in the accepting, shipping, or fulfilling the service or product or the billing of the customer (i.e. fulfillment house):

**TERMINAL AND GATEWAY SETUP INFORMATION**

The Gateway Provider monthly fee and per transaction fee will either be billed by the gateway provider or the pass-through costs will be billed by BCC.

DOES YOUR SITE HAVE AN SSL?  Yes  No

SHOPPING CART PROVIDER GATEWAY PROVIDER TERMINAL MANUFACTURER AVAILABLE MODEL #

PLEASE SELECT THE TERMINAL OPTIONS:  AUTO BATCH: \_\_\_\_ : \_\_\_\_  AM  PM  PIN BASED DEBIT Specify PIN Pad: \_\_\_\_\_  Tips  MO/TO  Level 2 Corporate Is the terminal dial up or IP?  Dial Up  IP

INTEGRATED POS POS SOFTWARE PROVIDER CONTACT PERSON FOR POS PHONE NUMBER POS SOFTWARE NAME POS SOFTWARE VERSION

**SITE INSPECTION (FOR OFFICE USE ONLY)**

Based upon your review, does merchant have the appropriate facilities, equipment, inventory, personnel and License/Permit to operate their business?  YES  NO

Does merchant own or rent this property?  OWN  RENT

LANDLORD NAME LANDLORD PHONE

INSPECTOR SIGNATURE INSPECTOR PRINT NAME INSPECTION DATE

**(FOR OFFICE USE ONLY) APPROVED: BCC Inc, for itself and on behalf of Merrick Bank by**

SIGNATURE PRINT NAME DATE

## Request for Taxpayer Identification Number and Certification

**Give form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

## Terms and Conditions

This Merchant Services Agreement (the "Agreement") including the additional Definitions which are expressly incorporated herein by reference and may be viewed at [www.bankcardcentral.com](http://www.bankcardcentral.com), is made as of the date approved and a merchant account established by Merrick Bank, South Jordan, Utah, by and among Bank, BankCard Central, Inc. ("BCC") all collectively referred to as "Bank" and the business or entity ("Merchant"). Bank is engaged in the business of providing settlement services to merchants that accept valid credit card or off-line debit cards bearing the service mark of VISA, U.S.A. Inc., ("VISA"), Discover® or MasterCard International, Inc., ("MasterCard") for payment for goods and services. BCC is registered with VISA as an Independent Sales Organization and with MasterCard as a Member Service Provider; and has agreed with Bank to provide certain services, including arranging for authorization and processing services, for merchants that use Bank's settlement services for Card Transactions; and WHEREAS, Merchant desires to use the services provided by Bank and BCC, including by or through authorized third party service providers to authorize, process and settle Card Transactions for payment by Cardholders for goods and services obtained from Merchant. Whereas, Merchant warrants that it has not been terminated from settlement of card transactions by any financial institution or determined to be in violation of the rules and regulations of Bank, MasterCard, Visa, Discover or any other card association or network (Rules) and Merchant acknowledges that Bank has relied upon the information contained in the Merchant Application in determining whether to accept Merchant's application and in setting the Discount Fee and Transaction Fees charged Merchant. NOW THEREFORE, in consideration of the representations, covenants and promises made herein and in the accompanying Merchant Application, the parties hereto agree as follows:

### 1. MERCHANT'S OBLIGATIONS AND DUTIES.

**1.1 Honoring Cards.** A valid credit card is a card in the form issued under license from Visa U.S.A., Inc. Visa International, Inc. or MasterCard International, Inc. ("Bank Card"), Discover or (ii) any other valid credit card accepted by Merchant by agreement with Bank and BCC. When accepting a Card, Merchant will complete all transactions in accordance with this Agreement and the Rules, as presently in effect and as amended from time to time, which rules are incorporated by reference and will follow the steps contained in Bank's Card Acceptance Procedures, to on Mail Order/Telephone order transactions obtain and submit with the transaction the Cardholder address so to obtain an address verification (AVS) for the cardholder and (j) on internet sales obtain the cardholder's card verification value (CVV), Card Verification Code (CVC), Card Identifier (CID).

**1.2 Merchant shall not:** (a) Establish minimum or maximum amounts for Card sales as a condition for accepting any Card; (b) Prepare and present to Bank for purchase any Transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations (i) previously owed to Merchant, (ii) rising from the dishonor of a Cardholder's personal check, and/or (iii) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties. (c) Require a Cardholder to pay any fee to offset any part of the fees and discounts imposed upon Merchant by this Agreement; (d) Require any Cardholder to pay any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a customer presenting a Card to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, Merchant may not, by this term, be prevented from offering discounts to customers for cash purchases; (e) Prepare and present to Bank for purchase any Card Transaction for the purpose of obtaining a cash advance or collecting on a previous transaction that has been charged back to Merchant; (f) Prepare more than one Card Transaction for a single sale or for a single item but shall include all items of goods and services purchased in a single Transaction in the total amount on a single Card Transaction except under the following circumstances: (i) For purchases in separate departments of a multiple department store; (ii) For partial payment, installment payment, delayed delivery or an advance deposit; or (iii) For delayed or amended charges governed by rules for travel and entertainment merchants and Transactions; (g) Impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder; (h) Merchant shall not engage in a Card Transaction if the person seeking to charge the purchase to his or her card does not present the Card to permit the Merchant to examine it and obtain an imprint or does not otherwise verify that the Card is in the possession of the person seeking to use the Card, (j) not process through any other Bank or ISO other than BCC during the term of this agreement.

**1.3 Authorization.** (a) Merchant will obtain an Authorization for all Card transactions. If Merchant cannot, for any reason, obtain an electronic Authorization, Merchant will request a Voice Authorization from Bank's designated authorization center and will legibly print the authorization number on the Card Transaction. (b) Merchant shall not obtain or attempt to obtain authorization from Bank's authorization center unless Merchant intends to submit to Bank a Transaction for the authorized amount if Authorization for the Transaction is given. (c) Merchant shall not divide a single Transaction between two or more Card Transactions on a single Card to avoid Authorization limits that may be set by the Card issuer. (d) Merchant understands and acknowledges that an Authorization only confirms the availability of the Cardholder's credit at the time of the Authorization. It does not warrant that the person presenting the Card is the rightful Cardholder, nor is it an unconditional promise, guarantee or representation by Bank or BCC that a Transaction is or will be deemed valid and not subject to dispute, debit or Chargeback. Merchant understands and acknowledges that Bank and BCC will add a surcharge to the Discount Fee stated in the Merchant Application section of this Merchant Agreement that is charged for "qualified" Transactions whenever a higher interchange is charged than the lowest interchange for the transaction type or there is an exception to normal Transaction processing procedures which surcharge amount is reflected in the applicable higher Discount Fees for "mid-qualified" and/or "non-qualified" Transactions which are set forth in the Merchant Application.

**1.4 MAIL, TELEPHONE, E-COMMERCE (INTERNET), RECURRING AND PRE-AUTHORIZED TRANSACTIONS.** Merchant understands that Mail, Telephone and E-Commerce (Internet) orders and sale Transactions have substantially higher risk of Chargeback and Cardholder dispute than Card "present" (e.g. in a face-to-face) Transactions. Merchant understands that it may engage in Mail, Telephone and E-Commerce (Internet) Transactions, only if requested in the Merchant Application. Merchant understands that Sales Records submitted for Mail, Telephone, Recurring Transactions, Pre-Authorized Orders and E-Commerce (Internet) Transactions are subject to Bank's and/or BCC's increased risk management and security review procedures and may result in delays or holds of funds being released to Merchant. Merchant acknowledges that all mail order transactions, telephone order transactions, recurring transactions, pre-authorized order Transactions and e-commerce (internet transactions) are difficult to defend against charge back and agrees that it shall take reasonable precautions to protect against charge backs, including, but not limited to the following: (i) delivering merchandise only to the cardholder's billing address where the Issuing Bank sends the Cardholder's billing statement; (ii) using a delivery service that maintains shipping logs and requires signatures by a person receiving merchandise; (iii) using AVS and not processing sales unless all information matches the AVS; (iv) obtaining successful CVV2/CVC2/CID verification; (v) obtaining the expiration date of the Card.

**Recurring Transaction and Pre-Authorized Order Regulations.** If Merchant processes Recurring Transactions and charges a Cardholder's account periodically for recurring payments (e.g., monthly insurance premiums, yearly subscriptions, annual membership fees, etc.) Merchant must: (i) have the Cardholder complete and deliver to Merchant a written request for such goods and services to be charged to cardholder's account. The written request must at least specify the transaction amounts, the frequency of recurring charges and the duration of time for which the cardholder's permission is granted; (ii) if the Recurring Transaction is renewed, the cardholder must complete and deliver to Merchant a subsequent written request for the continuation of such recurring payments to be charged to the Cardholder's account; (iii) Merchant may not complete a Recurring Transaction after receiving a cancellation notice from the cardholder; (iv) Merchant must obtain an Authorization for each Transaction and type or print legibly on the signature line of the Sales Record for Recurring Transactions the words "Recurring Transaction" (and "PO" for MasterCard Transaction) in lieu of the Cardholder's signature and must provide both an invoice number and the appropriate "Recurring Transaction" indicator must be included in each Authorization request; (v) Merchant must perform an AVS inquiry and CVV/CVC2/CID value for at least the first Transaction and then annually thereafter, if applicable. Merchant understands that penalties can be assessed by the Associations and the Discover for failure to use the Recurring Payment Indicator; (vi) A Recurring Transaction or Pre-Authorized Order may not include partial payments for goods and services purchased in a single Transaction; and (vii) No finance charge may be imposed in connection with a Recurring Transaction or Pre-Authorized Order. Merchant agrees that Bank or BCC may impose an excess charge back fee, as they in their sole discretion believe appropriate, should Merchant fail to cancel recurring transactions when requested by a customer and such failure increases Bank's exposure to fine, fee or reprimand.

**E-Commerce (Internet).** E-commerce Merchants agree to comply, in addition to other applicable Association Rules and Discover Operating Regulations, with the following: (i) post its privacy and security policies on its websites, where such policies shall be clearly marked for consumers to see and review; (ii) website must include all the following information in a prominent manner: (1) Complete description of the products offered; (2) Returned merchandise and refund policy; (3) method for the Cardholder to acknowledge their acceptance of the terms and conditions for returned merchandise or for the refund policy; this acknowledgement should be in a format that complies with Association guidelines for proper disclosure; (4) Customer service contact, including email address and/or telephone number; (5) Transaction currency; (6) Any applicable export or legal restrictions; (7) Delivery policy; (8) Consumer data privacy policy; (9) disclosure of the Merchant Outlet country, on the same screen view as the checkout screen used to present the total purchase amount or within the sequence of Web pages the Cardholder accesses during the checkout process; and (10) A description of the Transaction security used on Merchant's website. Merchant acknowledges that the Electronic Commerce Indicator must be used to identify E-Commerce Transactions in the Authorization request and clearing record. Penalties can be assessed for failure to use the correct Electronic Commerce Indicator.

**Delayed Delivery or Deposit Balance Transaction Authorization.** If Merchant engages in the practice of delayed delivery or accepting deposits then Merchant agrees that it must also (in addition to, and not in lieu of, other applicable procedures and Rules) comply with the following procedures and Rules for Authorization: (i) where merchandise is to be shipped or services provided at a later date, an Authorization is considered to be valid if (1) the merchandise shipping date is within seven (7) calendar days of the date Authorization was obtained or the services are provided; and (2) the Transaction amount does not exceed the authorized amount plus fifteen percent (15%), representing shipping costs. In any case, all Transactions with an Authorization dated more than twenty-five (25) days prior to the shipping date or date services are rendered are subject to an increased risk of Chargeback.

**1.5 Settlement.** Merchant understands and agrees to balance and settle each POS terminal daily except on days when Merchant's place of business is closed. Merchant agrees to electronically submit transactions no later than the day following the date of authorization. Sales submitted or settled more than one day following after the date of authorization may be refused, become subject to chargeback or assessed an additional fee by Bank. Transactions charged to a card issued by a foreign issuer may be assessed an additional fee. Merchant acknowledges that all transactions between Merchant and Bank under this Agreement shall be treated as a single transaction and that all settlements are provisional subject to the cardholder's and issuing banks rights under the Rules for disputing charges against the cardholder's account. In submitting transactions to Bank, Merchant endorses and assigns to Bank all right, title and interest in such items with rights of endorsement. Bank has the right to receive payment on all transactions acquired, and Merchant will not attempt to collect any such transactions. If any payment is received, Merchant will hold it in trust for and promptly deliver to Bank.

**1.8 Charge backs.** Merchant will pay to Bank upon demand and bear all risk of loss without warranty of recourse to Bank for the amount of any transaction plus applicable fees or other amounts due Bank or its representative (including the costs and expenses of Bank or its representative), and Bank shall have the right to debit Merchant's incoming transactions, Merchant Account or any other funds of Merchant in Bank's direct or indirect control and to charge back any transaction to Merchant that is deemed by the Cardholder's issuing bank to be a valid charge back. Merchant agrees to accept and understands that it is responsible for all charge backs and understands that some charge backs cannot be rebutted or remedied.

Merchant understands that Bank and BCC will assess a charge back fee for each charge back plus the amount of any charge back fines or penalties assessed by VISA, MasterCard or the Discover against the Bank and/or BCC for Transactions arising from the activities of Merchant, or any other charges as may be established by Bank and/or BCC from time to time. Furthermore, Bank and/or BCC may assess Merchant a fee for processing any fines or penalties that may be charged by VISA, MasterCard or Discover at the sole and absolute discretion of Bank and/or BCC. Merchant understands and acknowledges that Merchant bears one hundred percent (100%) of the risk of charge back under the Rules without limiting any other provisions in this Merchant Agreement, to hold Bank and BCC harmless from any losses, claims, and costs arising from or associated with Merchants acceptance of Card Transactions. Merchant also agrees to pay for and indemnify and hold harmless Bank and/or BCC from any fines or penalties imposed on Bank and/or BCC by any Association or Discover resulting from Merchant's activities, acts or omissions, charge backs and any other fees or fines imposed by an Association or Discover with respect to Merchant's acts or omissions, whether the activities occur or the fines, penalties, or other assessments are imposed, during or after the Term of this Merchant Agreement. If Merchant's charge back ratio exceeds the Card Association or Network's allowed charge back ratios, Merchant shall, in addition to the charge back fees and any applicable charge back handling fees or fines, pay Bank an excessive charge back fee, as determined by Bank, for all charge backs in excess of Card Association Rules or Discover Operating Regulations allowed ratios. Each estimated industry charge back percentage is subject to change from time to time by Bank and BCC in order to reflect changes in Card Association or Discover established ratios.

**1.9 Charge back Reserve Account.** Notwithstanding any other language to the contrary in this Agreement, Bank and/or BCC reserves, in their sole discretion, the right to establish (without notice to Merchant) and Merchant agrees to fund a non-interest bearing Chargeback Reserve Account, or demand other security and/or to raise the Discount Fee or Transaction Fees whenever Bank and/or BCC in its/their sole discretion, believes that Bank and/or BCC has a credit risk exposure and that recovery of any amounts due or which may become due from Merchant, are in jeopardy or that the Bank and/or BCC may incur losses in connection with or related to the Services provided to Merchant under this Merchant Agreement. The initial amount of the Reserve Account shall be set by Bank and/or BCC in their sole discretion, based upon, but without limitation, Merchant's processing history and potential overall credit risk to Bank and BCC. At Bank's and/or BCC's sole discretion such Reserve Account may be funded as a "rolling reserve" from a portion (percentage) of the funds from each Sales Transaction and/or by requiring a deposit of funds to the Reserve Account. Reserve Account funds may be used to cover charge backs, credits, fines, costs, assessments, and other obligations of Merchant that are incurred under this Merchant Agreement. Merchant hereby authorizes Bank and/or BCC, without notice or demand, to offset any related fees, losses, charges, costs and amounts for any other obligations of Merchant due Bank and/or BCC from and against Merchant's Reserve Account funds when adequate funds are not available in the DDA or from funds otherwise due Merchant under this Merchant Agreement. Merchant also hereby authorizes Bank and/or BCC, without notice or demand, to offset any related fees, losses, charges, costs and amounts for any other obligations due Bank and/or BCC from and against any other deposit accounts of Merchant maintained at any financial institution, when adequate funds are not available in Merchant's Reserve Account or DDA. Merchant hereby agrees that any financial institution at which Merchant maintains a deposit account may rely upon an executed copy of this Merchant Agreement provided by Bank and/or BCC as Merchant's, express written instruction and authorization to permit such offset by Bank and/or BCC, and Merchant's agreement that said financial institution shall be released from any liability for any good faith compliance with the express written instruction and authorization as set forth herein to permit such offset by Bank and/or BCC. After payment or adequate provision for payment is made by Merchant to Bank and BCC for all obligations on the part of Merchant to Bank and BCC, including, without limitation, any and all amounts due for any lease or rental of any POS equipment and/or any payment gateway utilized by Merchant under this Merchant Agreement and the Rules, Merchant may request Bank and/or BCC to disburse any and all funds due Merchant remaining in the Reserve Account. Unless otherwise agreed to by Bank and/or BCC, such funds will not be disbursed to Merchant until the end of two hundred and seventy (270) days from the date of the last Chargeback or Transaction, whichever is later, unless Bank and BCC in their sole and absolute discretion, has reason to believe that Chargeback rights under the then applicable Rules may be longer than such two hundred and seventy (270) day period of time, in which event such funds will not be disbursed until the expiration of the period of time for such Chargeback rights. If requested by

Merchant, Bank end/or BCC will set the date when funds in the Reserve Account, held beyond such two hundred and seventy (270) day period referenced above will be released and will notify Merchant of such date. No funds held in the Reserve Account shall accrue or bear interest.

**1.10 Exchanges and Credits.** (a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with operating regulations of the applicable Card Association's regulations or Discover Operating regulations. Merchant agrees to disclose, if applicable, to a Cardholder before a Card transaction is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). (b) If Merchant does not make these disclosures, a full refund in the form of a credit to the cardholder's Card account must be given. Disclosures must be made on all copies of Card Transactions or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the transaction or on an invoice being presented for the Cardholder's signature.

**1.11 Deposit of Fraudulent Transactions.** Merchant shall not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source. If Merchant deposits any such Transaction, Merchant may be immediately terminated and Bank may hold funds and/or demand an Escrow reserve; and further, Merchant may be subject to the Visa, MasterCard and Discover reporting requirements.

**1.12 Lodging and Vehicle Rental Transactions.** (a) Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. (b) Regardless of the terms and conditions of any written preauthorization form, the amount for any lodging or vehicle rental Transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.

**1.13 Business Changes.** Merchant shall provide Bank with immediate notice of its intent to: (a) transfer or sell any substantial part of its total assets, or liquidate; (b) change the basic nature of its business, including selling any products or services not related to its current business; (c) change ownership or transfer control of its business; or (d) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business. Failure to provide notice as required above may be deemed a material breach and shall be sufficient grounds for termination of Merchant. In the event any of the changes listed above should occur, Bank shall have the option to re-negotiate the terms of this Agreement or terminate the Agreement.

**1.14 Merchant's Designated Deposit Account.** Merchant shall at all times maintain an Account at a bank that is a member of the Federal Reserve ACH System. All credits for collected funds and debits for fees, payments and Charge backs and other amounts for which Merchant is liable under the terms of this Agreement shall be made to the Account. Merchant may not close or change the Account for seven (7) months following its last credit card transaction. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Bank and BCC a security interest in all of the Merchant's accounts wherever located to the extent of any and all, fee, payments, Charge backs and other amounts due under this Agreement.

**1.15 Payment.** Merchant shall at all times maintain a commercial checking account with Bank or with another financial institution of Merchant's choice that belongs to the Automated Clearing House ("ACH") network and can accept ACH transactions and that Processor and Bank will use to debit and/or credit funds on a daily or monthly basis. Processor and Bank will debit Merchant's Designated Deposit Account (DDA) daily for the Discount Fees. Merchant acknowledges that this Agreement provides for PROVISIONAL SETTLEMENT of Merchant's transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for charge backs, adjustments and final settlement including but not limited to those enumerated herein. All payments to Merchant for legitimate and authorized transactions shall be made by Bank through the ACH and shall normally be electronically transmitted directly to Merchant's Account. Merchant hereby authorizes Bank to initiate debit and credit entries to Merchant's Account. This authorization shall continue in effect for at least 180 days after termination of this Agreement, or at Bank's discretion, for a longer period as determined by Bank in the exercise of reasonable discretion. Retail Merchant understands that payments with respect to a transaction date are normally transmitted by the end of the third Bank business day following the day Merchant closes such transaction date batch provided that such transmission is before 5:00 p.m. Central Standard Time, or such other time as Bank shall designate unless Bank or BCC is investigating a transaction for breach of warranty by Merchant or for other reasons excluding Mail/Telephone Order Merchant where payment on a transaction will be by the end of the fifth (5th) bank business day. Bank and/or BCC reserve the right to divert and hold all funds when Bank and/or BCC is investigating the breach of any warranty, covenant, representation, or agreement by Merchant or has reasonable cause to believe that Merchant may have violated a provision of this Merchant Agreement, the Rules and/or is engaged in illegal, fraudulent or suspicious activity. Bank and/or BCC monitor account activity and Merchant agrees that Bank and/or BCC may divert funds for a reasonable period to investigate account activity. Bank and/or BCC will attempt to notify Merchant but Bank and/or BCC shall have no liability for any such actions taken by Bank and/or BCC. However, Bank and/or BCC cannot guarantee the timeliness with which any payment may be credited by Merchant's bank. Merchant understands that due to the nature of the ACH and the electronic networks involved payment to Merchant can be delayed. In such cases, Merchant agrees to work with Bank to help resolve any problems in crediting Merchant's Account. In the event that a payment is rejected by Merchant's bank or fails to arrive within five (5) days from the date of settlement due to problems beyond Bank's control, Bank may periodically wire transfer all funds due Merchant until the problem is corrected, at Merchant's expense. All payments to Merchant shall be made after first deducting therefrom the Discount Fee, Transaction Fees, batch fees, credits, charge backs, reserves or other fees or charges for which Merchant is responsible pursuant to this Agreement. Said charges and fees shall be deducted from incoming transactions or may be debited against Merchant's Account at Bank's sole discretion, without any further notice or demand Bank may hold, set off or retain funds to protect against amounts owed Bank or based on Merchant's financial condition. Bank will not be liable for any dishonor of any item as result of actions taken hereunder. Any account is subject to review, verification, audit and acceptance by Bank. Bank may return any item to Merchant for correction.

**1.16 Discount Fee and Transaction Fees.** Merchant agrees to pay Bank the non-returnable fees stated in this agreement as amended from time to time or as otherwise agreed. Bank shall have the right to increase the Discount Fee (including tier charges), Transaction Fees or other fees from time to time to reflect increases imposed by the Card Associations or Discover or the increased economic or financial risk of loss presented by the Merchant or increased costs in providing service to the Merchant. Merchant acknowledges the Fees (including discount and tier charges) quoted in the accompanying Merchant Application is contingent upon Merchant closing batches at least once every business day, and further understands that in the event that batches are not closed at least daily, Bank may initiate batch closing on Merchant's behalf. Batches must be closed daily and an authorization obtained for every transaction-matching the sales amount exactly (or within 15% for hotels and car rentals, 20% for restaurants, bars and night clubs) or they will be treated as nonqualified and fees charged accordingly. PLEASE REFER TO THE PRICING SCHEDULE ATTACHED TO THIS AGREEMENT FOR THE AMOUNT OF THESE FEES. Merchant's pricing is based upon the annual volume, average ticket, and method of doing business stated in the Merchant Application. If the actual volume and average ticket are not as warranted or if Merchant significantly alters its method of doing business, Bank may adjust Merchant's discount rate and/or Transaction fees without prior notice in the event of a change in the parameters as stated above or should special circumstances arise (i.e. sales, etc.) which shall change either temporarily or permanently the existing conditions. Merchant must notify Bank prior to those changes, so that any necessary adjustment can be made. Additional fees shall be assessed for processing of transactions or credit drafts emanating from foreign (non U.S.A.) credit card transactions. Merchant agrees to pay these fees and any increase in interchange fees.

**1.17 Minimum Monthly Fee/Statement Fee.** Merchant agrees that the minimum Monthly Fee to be imposed for any month, or portion thereof, shall be in accordance with the Pricing Schedule. Merchant acknowledges that Bank assesses a Monthly Service/Statement Fee, ACH fee (see Pricing Schedule) or such other fee as may be established from time to time. Merchant also acknowledges that the monthly minimum Service/Statement Fee and ACH Fee applies to each Merchant identification number assigned to Merchant. Merchant agrees to pay these fees.

**1.18 Cancellation Fee.** Merchant shall pay BCC a cancellation fee, if Merchant breaches this Merchant Agreement by terminating it prior to the expiration of the Initial Term or if this Merchant Agreement is terminated by Bank or BCC prior to the expiration of the Initial Term, Bank and BCC will suffer a substantial injury that is difficult or impossible to accurately estimate. Accordingly, after giving due consideration to the costs that Bank and BCC may incur by reason of such early termination, including without limitation those incurred in processing the Merchant Application and approving Merchant for the Services, and in an effort to liquidate in advance the sum that should represent such damages, the parties have agreed that Merchant shall pay, as liquidated damages the sum of (i) **\$395.00 if terminated before completion of the first year of the Initial Term;** or (ii) **\$250.00 if terminated before completion of the second year of the Agreement.**

**1.19 Display of Promotional Materials.** (a) Merchant agrees to prominently display the promotional materials provided by Bank and BCC in its place(s) of business. (b) Merchant shall not use any promotional materials or Marks associated with Visa, MasterCard or Discover in any way which suggests or implies that either endorses any goods or services other than Bank Card services.

**1.20 Cardholder Data Security.** Merchant acknowledges that Bank has made it aware of its obligations under the Payment Card Industry-Data Security Standards (PCI-DSS) and warrants that it will fulfill all current and future PCI-DSS requirements. Merchant will complete all required Self Assessment Questionnaires and IT Scans in a timely manner. Merchant understands that failure to comply with PCI-DSS requirements could result in fines, merchant account termination and placement on the Combined Terminated Merchant File. Merchant agrees to participate in Bank's PCI-DSS Program and agrees to pay the then prevailing charges for participation in this program. Merchant warrants that it will not disclose, sell or disseminate any Cardholder information obtained in connection with a Card Transaction (including without limitation, the names, addresses, Card account numbers, copies of imprinted Sales Records and/or Credit Records, mailing lists, tapes or other media obtained in connection with a Sales Record and/or Credit Record) except for purposes of authorizing, completing and settling Card Transactions and resolving any charge backs, retrieval requests or similar issues involving Card Transactions, other than pursuant to a court or governmental agency request, subpoena or order. Merchant shall use proper controls for, limit access to, and render unreadable prior to discarding all records containing Cardholder account numbers and Card imprints. Merchant will not retain or store magnetic stripe data after a Transaction has been authorized. Merchant will store all media containing Cardholder names, Cardholder account information, and other personal information, as well as Card imprints (such as Sales Records and Credit Records, auto rental agreements, and carbons) in an area limited to selected personnel and, prior to discarding any such information, destroy or render the data unreadable. Merchant further warrants and agrees that in the event of its failure, including bankruptcy, insolvency, or other suspension of business operations, it will not sell, transfer, or disclose any materials including computing equipment that contains Cardholder account numbers, personal information, or Transaction information. Merchant will indemnify & hold Bank and BCC harmless for any such disclosure.

**1.21 Credit and Financial Inquiries; Additional Locations; Inspections.** (a) Merchant authorizes Bank and BCC to make, at any time, any credit inquiries which either may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card transaction activities subsequent to acceptance of this Agreement or Merchant's financial condition. Such inquiries shall include, but are not limited to, a credit check of the business including its proprietor, partners, principal owners or officers. If requested to do so by Bank or BCC, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide, if requested, quarterly financial statements within forty-five (45) days after the end of each fiscal quarter and annual audited financial statements within ninety (90) days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. Merchant will also provide such other financial statements and other information, including income tax and business tax returns and other financial information as Bank or BCC may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices and its compliance with the terms and provisions of this Merchant Agreement. (b) Merchant may honor Cards only at locations approved by Bank. Additional locations may be added, subject to Bank's approval. Either Merchant or Bank may delete any location by providing notice as provided in this Agreement. (c) Merchant agrees to permit Bank or BCC, at any time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license(s) or permit(s) (where necessary) to conduct its business. (d) Representatives of Bank or BCC may, during normal business hours, inspect, audit and make copies of Merchant's books, accounts, records and files pertaining to any Card Transaction.

**1.22 Forms.** Merchant shall use only such forms or modes of transmission of Card Transactions and Credit Vouchers as are provided or approved in advance by Bank and Merchant shall not use forms provided by Bank or BCC other than in connection with Card Transactions hereunder unless Bank shall have previously given Merchant written consent for such use.

**1.23 Records.** In addition to any records routinely furnished to Bank pursuant to this Agreement, Merchant shall preserve a paper or microfilm copy of the actual paper Card Transactions and Credit Vouchers and, if mail, phone order or preauthorized order is involved, the Cardholder's signed authorization for the Transaction for at least three (3) years after the date Merchant presents the Transaction to Bank.

**1.24 Requests for Copies.** Within five (5) days or receipt of any request by Bank or BCC, Merchant shall provide either the actual paper Card Transaction or a legible copy thereof (in size comparable to the actual Card Transaction) and any other documentary evidence available to Merchant and reasonably requested by Bank or BCC to meet Bank's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.

**1.25 Compliance with Law.** Merchant shall comply with all laws applicable to Merchant, Merchant's business and any Card Transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations.

**1.26 Security.** Merchant agrees that all of its obligations under this Agreement shall be secured by all deposit accounts maintained by Merchant, including deposits made by Merchant as collateral or funds withheld by Bank or BCC as the result of routine security monitoring, and by all other personal property that serves as collateral for any other indebtedness arising out of Merchant's business and owed by Merchant to Bank or BCC. Merchant agrees that if Bank or BCC determines that the proceeds of Merchant's future Card transactions are unlikely to cover anticipated Charge backs, credits, fees and adjustments, as reasonably determined by Bank or BCC (whether because this Agreement has been terminated or for any other reason), Bank or BCC may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts pending a determination from time to time by Bank or BCC to exercise their respective rights as a secured party by applying the amount(s) theretofore withheld by Bank or BCC in partial or full payment of Merchant obligations to Bank or BCC. In addition to any rights granted under applicable law, Bank and BCC are hereby authorized (any related notice and demand are hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Merchant's Obligations, whether such Obligations are liquidated, un-liquidated, fixed, contingent, matured or un-matured. Merchant agrees to duly execute and deliver to Bank and BCC such instruments and documents as may be reasonably requested to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Merchant Agreement.

**1.27 Modifications to Agreement.** This Agreement is subject to amendment to conform with Card Association regulations and Discover Operating Regulations, as amended from time to time. From time to time Bank may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by mailing written notice to Merchant of the amendment at least thirty (30) days prior to the effective date of the amendment, and the amendment shall become effective unless Bank or BCC receives Merchant's notice of termination of this Agreement before such effective date. Amendments required due to changes in either Card Association's rules and regulations or Discover Operating Regulations or any law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable rule, regulation, law or decision. No provision of this Agreement may be amended or modified except in writing signed by the BCC and Bank. Any amendment to this Agreement shall be effective the later of either the effective date contained in the notice or fifteen (15) days after the notice is mailed, or when expressly agreed except as provided herein.

**1.28 Warranties of Merchant.** Merchant hereby provides the following warranties to Bank and BCC: (a) All information contained in the Merchant Application or any other documents delivered to Bank and /or BCC in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners or officers. (b) Merchant has the power to execute, deliver and perform this Agreement. This Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject. (c) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so. (d) There is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations. (e) Each Card Transaction presented to Bank for collection is genuine and is not the result of any fraudulent transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement. Further, Merchant warrants that each Card Transaction is the result of a bona fide Card Transaction for the purchase of goods or services by the Cardholder in the total amount stated on the Card Transaction. (f) Merchant is not now, and will not during the term of this Agreement, engage in any manner of or deposit Card Transaction resulting from any type of business listed on the Unacceptable Merchant List. (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby and the Cardholder has no defense right of offset or counterclaim against Merchant in connection with the Card Transaction. (h) Merchant has complied with Bank's Card Acceptance Procedures and the Card Transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement, and shall not be subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' rules, Discover Operating Regulations, the Consumer Credit Protection Act (15 USC 1601) or other relevant state or federal statutes or regulations. (i) Merchant warrants that any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Card Transaction has been accepted by Bank. (j) Merchant is not subject to any proceeding in bankruptcy, voluntary or involuntary, or has not made any assignment for the benefit of creditors. (k) Merchant may not accept a Card for an unlawful Internet gambling transaction. Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations to Bank which are attributable, at the Bank's discretion, to Merchant's Transaction processing or business. (l) Garnishment/L Levy: Legal process fees of a \$100.00 each include, but are not limited to, levy, writ, garnishment, subpoena, and other requests for information from law enforcement agencies. Merchant understands and agrees that violation of any of these warranties shall be an Event of Default, and may cause this Merchant Agreement to be immediately terminated, or subject to termination, have all funds placed into a Reserve Account and result in Merchant and each Guarantor placed on the Combined Terminated Merchant File (CTMF), MATCH File or the Consortium Merchant Negative File (CMNF) published by Discover.

**1.29 Billing Disputes.** Merchant is responsible for paying BCC for services rendered in accordance with the schedule of fees furnished to Merchant, which may be amended from time to time as set forth above. **Merchant is responsible for examining all statements and reporting any questions or billing disputes to BCC in writing within 45 days from the date the statement is mailed.** All disputes should be mailed to the return address specified on the front of the merchant statement or faxed to 816-474-8999. If Merchant fails to timely notify BCC of a dispute, merchant is deemed to have accepted its statement and to have waived any claim. BCC is not responsible for any interest, NSF, accounting, bank or related fees due to untimely and/or inaccurate deposits and/or billings caused by Merchant or BCC.

## **2. BANK'S RIGHTS AND DUTIES**

**2.1 Collection of Card Transactions.** Bank shall accept from Merchant all Card Transactions deposited by Merchant under the terms of this Agreement and shall present the same to the appropriate Card Issuers for collection against Cardholder accounts. All presentation and assignment of Card Transaction, collection therefore and re-assignment or rejection of such Card Transactions are subject to the terms of this Agreement and regulations of the Card Associations and Discover Operating Regulations. Bank shall only provisionally credit the value of collected Card Transaction to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Charge backs, fees, penalties, late submission charges and items for which Bank did not receive final payment.

**2.2 Sale or Assignment of Card Transaction.** The presentation of Card Transaction to Bank for collection and payment is Merchant's agreement to sell and assign all its right, title and interest in each Card Transaction completed in conformity with Bank's Card Acceptance Procedures and shall constitute an endorsement by Merchant to Bank of such Card Transaction.

**2.3 Prohibited Payments.** Bank shall have the sole right to receive payment of any Card Transaction presented by Merchant unless and until there is a Chargeback. Unless specifically authorized in writing by Bank, Merchant shall not make or attempt to make any collections on any transaction and shall hold in trust for Bank and shall promptly deliver in kind to Bank any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying the payment.

## **3. MERCHANT DEPOSIT MONITORING.**

Merchant acknowledges that BCC and/or Bank will monitor Merchant's daily deposit activity and agrees to pay the cost of such monitoring. Merchant agrees that Bank may upon reasonable grounds suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. BCC and/or Bank will make good faith efforts to notify Merchant immediately. ISO and/or Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.

## **4. LIMITATION OF LIABILITY; INDEMNITY.**

**4.1** Bank's and BCC's liability, whether joint or several, with respect to any Card Transaction shall not exceed the amount of the Transaction less any applicable fees and charges. **In no event shall Bank and/or BCC, or their affiliates or any of their respective Directors, Officers, employees, agents or subcontractors be liable under any theory of tort, contract, strict liability or other legal theory, for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by Agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.**

**4.2** Merchant hereby agrees to indemnify and hold Bank and BCC harmless from and against any Association or Discover fines or fees and all losses, liabilities, damages and expenses (including attorney's fees and collection costs) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Merchant under this Merchant Agreement (including, without limitation, a violation of the Rules), or arising out of Merchant's or Merchant's employees' negligence or willful misconduct, in connection with Card Transactions or otherwise arising from Merchant's activities in the use of the merchant account provided by this Agreement as may be made by anyone by way of defense, dispute, offset, counterclaim, charge back, fine, fee or affirmative action, or for any damages of or losses that either Bank or BCC may incur as a result of Merchant's breach of this Agreement. Further, Merchant shall reimburse Bank or BCC, as the case may be, for all expenses and costs, including investigative or attorney's fees, with regard to any litigation between Bank and/or BCC in which Bank and/or BCC is found not to be liable to Merchant.

## **5. TERM; TERMINATION**

**5.1** This Agreement shall become effective upon acceptance by Bank and shall remain in effect for two (2) year from the effective date thereof. This Agreement shall automatically renew for like periods of two (2) year unless Merchant gives written Notice of Termination no more than sixty (60) days and no less than thirty (30) days before the end of the term of this Agreement or any renewal thereof. Bank or BCC may terminate this Agreement immediately without prior notice if (i) either party has reason to believe that fraudulent Card Transactions are occurring at any merchant location; (ii) either party has reason to believe that any activity prohibited by this Agreement or any Card Association Rules or Regulations or Discover Operating Regulations is occurring at any Merchant location; (iii) Bank or BCC is fined because of the activities of merchant; (iv) such action is taken to prevent loss to Bank, BCC or Card Issuers; or (v) Merchant appears on any Card Association or Discover security reporting. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination hereof.

**5.2** If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank or BCC shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by either Bank or BCC. Notwithstanding such termination, Bank and BCC, at their sole discretion, may determine that consent to Merchant's subsequent assumption of this Agreement is in Bank's and BCC's best interests. In such event, the assumption will be made under terms and conditions that are acceptable to Bank and BCC comply with the applicable federal or state laws governing such assumption.

## **6. EFFECT OF TERMINATION**

**6.1 Suspension of Payment.** In the event of termination regardless of cause, Merchant expressly authorizes Bank to withhold and discontinue the disbursement for all Cards and other payment transactions of Merchant in the process of being collected and deposited.

**6.2 Termination Reporting.** Merchant acknowledges that Bank may report Merchant's business name and the names and other identification of its principals to the combined Terminated Merchant File or MATCH list maintained by Visa and MasterCard or Consortium Merchant Negative File (CMNF) maintained by Discover. Merchant expressly agrees and consents to such reporting in the event Merchant is terminated for any of the reasons specified as cause by Visa, MasterCard or Discover. Furthermore, Merchant waives and shall hold harmless Bank and BCC from any claims which Merchant may raise as a result of such reporting.

**6.3 Termination.** Upon termination for any reason, Merchant will immediately cease requesting Authorizations. In the event Merchant obtains any Authorization after termination, Merchant expressly acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement.

**7. NOTICES** Any notice, request, instruction or other document required permitted or to be given under this Merchant Agreement shall be in writing and if given by Bank and/or BCC to Merchant shall be deemed to have been given on the date and at the time the same shall be delivered personally or deposited in the United States mail by first class mail, postage prepaid and addressed to Merchant at the addresses on the execution page of this Merchant Agreement or at such other addresses as Merchant may give to Bank and BCC shall be deemed to have been given on the date and at the time the same shall be delivered personally or mailed by certified mail, postage prepaid, return receipt requested or at such other addresses as Bank and/or BCC, as applicable, may give to Merchant from time to time by written notice. Notice may also be sent by facsimile or other electronic means of communication but, if such transmitted notice is by Merchant to Bank and/or BCC, the original of any such communication shall be mailed by first class mail, postage prepaid and addressed to Bank and/or BCC, as applicable, on the date of the electronic transmission and it shall not be deemed served until the United States Mail copy is received and confirmed by Bank and/or BCC, as applicable. If Bank and/or BCC, gives notice by facsimile or other electronic communication to Merchant, service shall be deemed to have been duly given on the day of transmission (with receipt acknowledged).

## **8. ADDITIONAL TERMS**

**8.1 Acceptance of Agreement.** This Agreement shall be effective only upon acceptance by Bank and BCC. In the event Merchant is not accepted for processing services, any application fee paid to Bank shall be non-refundable.

**8.2 Card Plans.** This Agreement is subject to the bylaws and rules promulgated by the Card Associations and Discover. The parties hereto are bound by and shall fully comply with these bylaws and rules and by such amendments or additions as may be made thereto.

**8.3 Force Majeure.** Bank and BCC shall not be liable for any damages resulting from and delay in performance or non-performance caused by circumstances beyond Bank's and BCC's control including, but not limited to, act of God, fire, flood, war, governmental action, accident, labor trouble or shortage, inability to obtain equipment, parts, service or transportation, electric, electronic or computer disruption, the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment or other events of similar effect in connection with Bank's and BCC's obligations herein.

**8.4 Section Headings.** All section headings contained herein are for descriptive purposes only, and the language of such section shall control.

**8.5 Assign ability.** This Agreement may be assigned by BCC. This Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of BCC and Bank. Merchant shall indemnify and hold Bank and BCC harmless from all liabilities, charge backs, expenses, costs, fees and fines arising from such transferee's or assignee's submission of Card transactions to Bank and BCC for processing. Any transfer of voting control shall be considered an assignment or transfer hereof.

**8.6 Governing Law; Jurisdiction and Venue.** Any action or proceeding arising from this Agreement by or against the Merchant shall be initiated or maintained under the jurisdiction of the State of Missouri with venue in the courts of Jackson County, in which case this Agreement shall be construed and governed by the laws of the State of Missouri. Any action or proceeding by Merchant arising from this Agreement against BCC or Bank shall be initiated or maintained under the jurisdiction of the State of Missouri with venue in the courts of Jackson County, in which case this Agreement shall be construed and governed by the laws of the State of Missouri.

**8.7 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.

**8.8 Prior Agreements.** This Agreement modifies amends and supersedes all previous agreements between the parties hereto and constitutes the entire understanding among the parties as to the matters contained herein.

**8.9 Waiver.** Failure by Bank or BCC to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future.

**8.10 Amendment.** No provision of this Merchant Agreement may be amended, modified or waived except by a writing signed by all the parties. This Merchant Agreement may be amended by Bank and BCC from time to time upon thirty (30) days written notice of change(s) in terms and conditions, except as otherwise provided to the contrary elsewhere in this Merchant Agreement. Any amendment to this Merchant Agreement shall be effective on the effective date specified in the notice to Merchant in the manner prescribed for notices herein.

**8.11 Survival.** All representations, warranties and covenants shall survive the termination of this Agreement.